

PANAMA AND THE UNITED STATES

by

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with the aid of the Research Staff of the Foreign Policy Association

INTRODUCTION

THE relations of the United States with Panama are in many respects similar to those of the British Empire with Egypt and of Japan with Manchuria. The Panama Canal is of "vital interest" to the United States, since its destruction would gravely impair this country's commerce and military security. The task of constructing, administering and protecting the Canal would have been simplified had Panama been annexed to the United States. The Canal, however, was constructed and is now operated under the authority of a grant from the Republic of Panama embodied in the treaty of November 18, 1903. While the Canal Zone,¹ a strip about ten miles wide, is administered by the United States, the Panama Republic proper is an independent state.² Should this state be unable or unwilling to respect the administrative autonomy of the Canal, or should it fall a prey to internal disorder which might provoke foreign intervention, the position of the United States with respect to the Canal might be jeopardized. Consequently, the task of defining the relationship between the United States and the Panama Republic, as well as the rights of the United States within the Canal Zone, is of the greatest importance, and the methods adopted by the two governments for reconciling their interests are in some ways unique.

CANAL TREATY OF 1903

The United States has been interested in the construction of a transisthmian canal since the Panama Congress of 1826.³ In

1846 it concluded a treaty with New Granada in which the latter government guaranteed freedom of transit across the Isthmus of Panama, and in which the United States undertook to guarantee the neutrality of the Isthmus and the "rights of sovereignty and property which New Granada has and possesses over the said territory."⁴ Before the Civil War the American government desired merely to have the canal constructed by private capital and open to the world upon terms of equality. Following the Civil War, however, a demand arose for an American canal built by the government on American soil.⁵ The realization of this nationalistic ideal was delayed by the controversy over the relative advantages of the Nicaragua and the Panama routes. Largely as a result of lobbying by representatives of the French Canal Company, the American Congress passed the Spooner Act of 1902, authorizing the President to negotiate a treaty with Colombia for the construction of a canal through Panama, and to purchase the rights of the French Canal Company for \$40,000,000. Should these negotiations fail, the President was to negotiate for the Nicaragua route. Under the authority of the Spooner Act, the Hay-Herran Treaty was signed with Colombia on January 22, 1903. Despite the pressure of the American diplomatic authorities, the Colombian legislature refused to accept this treaty, on the ground that it infringed upon the country's sovereignty and that its financial provisions were more generous to the French Canal Company, in which Americans were now interested, than to Colombia.

Following this rejection, a revolution took place in Panama on November 2, 1903 with

1. The cities of Panama and Colon were excluded from the Canal Zone by the treaty, but today the Zone includes the area covered by Gatun Lake.

2. Cf. General G. W. Goethals, *Government of the Canal Zone* (Princeton, Princeton University Press, 1915); Harry N. Howard, *Military Government in the Panama Canal Zone* (University of Oklahoma Press, 1931); D. H. Smith, *The Panama Canal: Its History, Activities and Organization* (Institute for Government Research, Baltimore, Johns Hopkins Press, 1927).

3. Cf. Mary W. Williams, *Anglo-American Isthmian Diplomacy, 1815-1915* (Oxford University Press, 1916); J. B. Moore, *A Digest of International Law* (Washington, Government Printing Office, 1906), Vol. VI; and L. M. Keasbey, *The Nicaraguan Canal and the Monroe Doctrine* (New York, Putnam, 1896).

4. Treaty of December 12, 1846 (William M. Malloy, *Treaties of the United States*, Washington, Government Printing Office, 1931, Vol. I, p. 302.)

5. Cf. James D. Richardson, *Messages and Papers of the Presidents* (Bureau of National Literature and Art, 1908), President Rutherford B. Hayes, March 8, 1880, Vol. VII, p. 585.

the aid of American representatives of the French Canal Company and of the Panama Railroad, and under the protection of American warships. On November 18 M. Bunau-Varilla, a representative of the French Canal Company who had been made Panamanian Minister to Washington, and Secretary of State Hay hurriedly concluded a treaty granting the United States authority to construct the Canal. By this treaty the government of Panama granted to the United States three major rights in perpetuity:

1. The right "to the use, occupation and control" of a Canal Zone ten miles wide, "for the

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CONTROL OVER FOREIGN POLICY

According to Article I, moreover, "the United States guarantees and will maintain the independence of Panama." Under this and other articles, the United States has claimed a certain right to interfere with the foreign and domestic policies of the Panama government. The United States, under Article I of the Canal Treaty, does not intend to protect Panama from the results of international wrongdoing or to support Panama in its claims against foreign countries. In reply to Panama's request in April 1908, following the occupation of the disputed territory of Jurado by Colombian troops, that the United States fulfill the guarantee of its independence, the American government declared that it was under no obligation to support Panama

"... in controversies it may engage in with other nations, without regard to the opinion of the United States as to the rights of such controversies and without having any control over the actions which may be convenient or desirable" to bring about a diplomatic solution. "It is possible that many offensive and prejudicial consequences may result from the course which Panama adopts in its international negotiations, but until these consequences" threaten the independence of Panama, the United States will not feel obligated to act under its guarantee.¹⁰

In 1909 Secretary of State Knox claimed that the United States had a

^{6-9.} A boundary convention of September 2, 1914 established "permanent" boundaries between Panama and the Zone. (Malloy, *Treaties of the United States*, cited, Vol. III, p. 2770.) This agreement, however, did not prejudice the right of the United States to take further territory under the 1903 treaty. (Cf. Article X.)

^{10.} *Memoria, Relaciones Exteriores, 1908* (Panama, Imprenta Nacional), p. iv.

construction, maintenance, operation, sanitation and protection" of the Canal (Article II); and also "all the rights, power and authority within the zone mentioned . . . which the United States would possess and exercise if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." (Article III.)

2. The right to take any lands and waters outside the Canal Zone "necessary and convenient for the construction, maintenance, operation, sanitation and protection" of the Canal.⁶⁻⁹

3. The right to enforce sanitary ordinances and to maintain public order in the cities of Panama and Colon in case the government of Panama should prove unable to do so.

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"... moral right to prevent Panama from getting into a controversy with any government which might eventually require the United States to take part in the controversy and support Panama. It certainly was not contemplated that Panama was at liberty to enter upon any wrongful quarrel on the assurance that she would have the support of the United States."¹¹

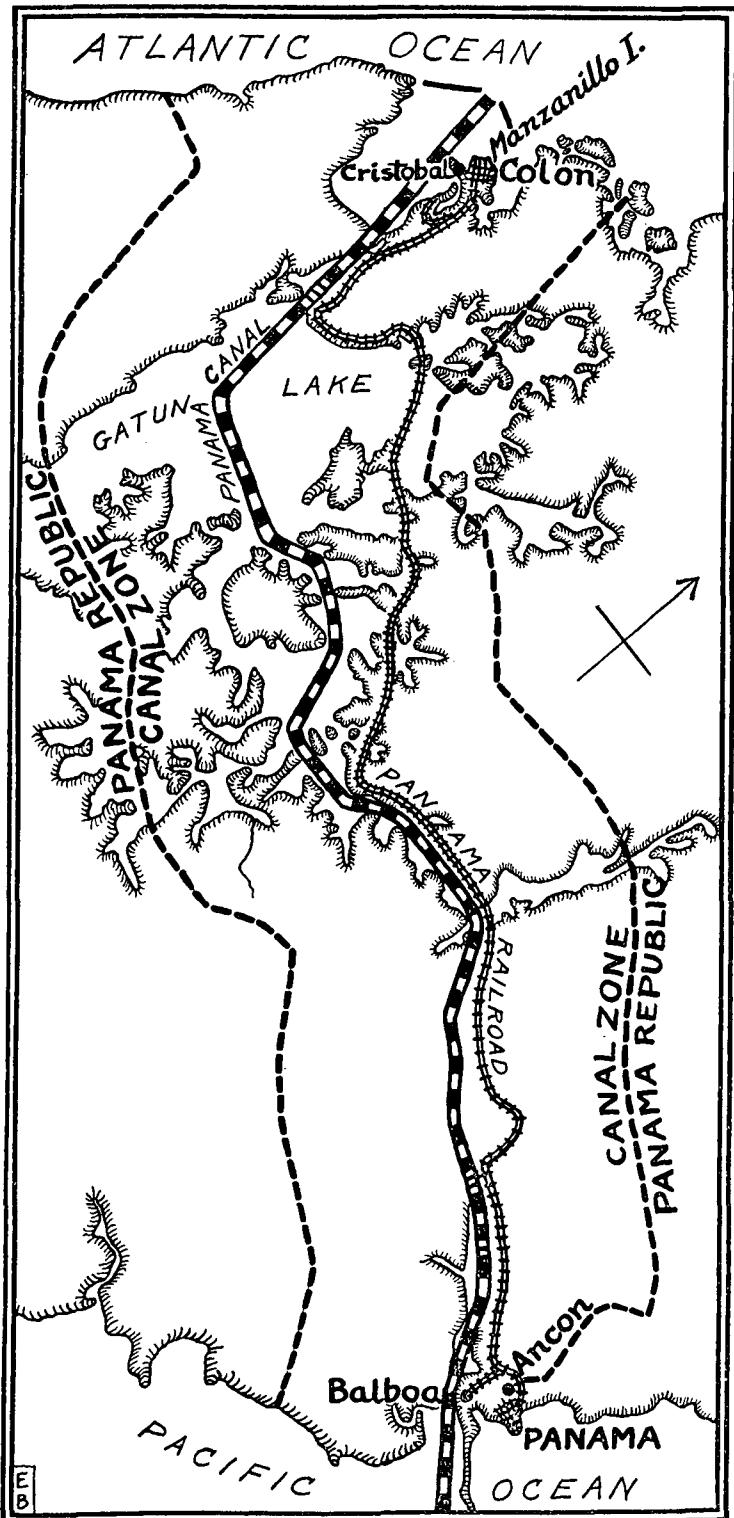
The White Award

On March 15, 1921, when Panama questioned the White award in its boundary controversy with Costa Rica, Secretary Hughes cabled Minister Price as follows:

"By Article I of the Hay-Bunau-Varilla Treaty, the Government of the United States 'guarantees and will maintain the independence of the Republic of Panama'. . . . The Government of Panama cannot fail to realize that in order that the Government of the United States may fully perform its obligation under the treaty it must advise itself as to the extent of the sovereignty of the Republic of Panama and hence of the territorial limits of Panama. It follows that the Government of the United States deems it necessary to inquire fully into the merits of a controversy which relates to the boundary of the Republic of Panama. This Government has no doubt that the Government of Panama will also recognize that there is implicit in the provisions of the Hay-Bunau-Varilla Treaty an undertaking on the part of Panama to observe faithfully its international obligations. The guarantee given to the Republic of Panama by the United States is obviously conditioned upon that performance. . . . The Government of the United States therefore feels compelled to urge upon the Government of Panama in the most friendly but urgent manner," to accept a boundary commission in accordance with the White arbitral award.¹²

^{11.} Secretary of State Knox to Minister Squiers, April 19, 1909, *Foreign Relations, 1909*, p. 469.

^{12.} Cf. A. S. Waddell, "Unsettled Boundary Disputes in Latin America," Foreign Policy Association, *Information Service*, Vol. V, No. 26, March 5, 1930, p. 494.



THE PANAMA CANAL

(According to the Canal Treaty, the cities of Panama and Colon are not included in the Zone.)

The United States declared that it was unable to find any ground upon which might be established the contention of Panama that the arbitrator had exceeded his powers.

^{13.} Garay to Price, March 18, 1921, *Memoria, Relaciones Exteriores*, 1922, Vol. I, p. 322.

In reply, the Panama government declared that the United States' guarantee of the independence of Panama "should have for its object the defense of the sovereignty of Panama" according to the *status quo ante*. "Article I of the Hay-Varilla treaty does not constitute the United States the judge and arbitrator of the territorial rights and actions of Panama in relation with its neighbors, but is a plain guarantee of its independence and integrity. . . ."¹⁴ Panama offered to arbitrate the question of whether the arbitrator had exceeded his powers,¹⁵ but the United States declined to consider the suggestion. Mr. Hughes believed that Costa Rica was right in maintaining that the White award had definitely settled the question.¹⁶ To secure pan-American support for its point of view, Panama sent special missions to the principal South American countries, asking their good offices.¹⁷

Following the occupation of the disputed territory by Costa Rican troops, Panama¹⁸ energetically protested that the United States had constituted itself an "international Executive Power compelling other sovereignties to carry out arbitration awards."¹⁹ Nevertheless, as the American government supported the position of Costa Rica, sending a battleship and 400 marines to the Isthmus, Panama gave way. Thus, Panama places a narrow interpretation on Article I of the Canal Treaty, while the United States at times has indicated that it may control the foreign policy of Panama in order to

^{14.} Garay to Hughes, July 21, 1921, *ibid.*, Vol. II, p. 360.
^{15.} Hughes to Garay, July 29, 1921, *ibid.*, p. 367. For the opinion of Dr. Antonio de Bustamante, upholding Panama's contention and proposing pan-American mediation or arbitration, cf. *ibid.*, Vol. I, p. 336.

^{16.} *Ibid.*, p. 339.

^{17.} *Ibid.*, p. 378.

^{18.} In a number of instances the United States has refused

obviate the necessity of defending that country from outside attack.

Despite the importance of the Panama Canal, the United States has interfered but little with the administration of the Republic of Panama, which has complete financial and judicial autonomy.¹⁹ Panama is not an American protectorate. It maintains a diplomatic service, concludes treaties on its own responsibility, is a member of the Pan American Union and the League of Nations and was elected a member of the League Council in 1931.

Nevertheless, the United States has a limited right of intervention under the Canal Treaty of 1903. In addition to the guarantee given in Article I, Article VII of the treaty provides in part:

"The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States, the Republic of Panama grants to the United States the right and authority to enforce the same.

"The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order."²⁰ (Both Panama and Colon lie outside the Canal Zone.)

Article 136 of the Panama constitution also provides:

"The Government of the United States of America may intervene, in any part of the Republic of Panama, to reestablish public peace and constitutional order, in the event of their being disturbed, provided that that nation shall, by

to carry out arbitration awards to which it was a party, on the ground of excess of power. For the King of Netherlands' arbitration over the Canadian boundary, cf. J. B. Moore, *A Digest of International Law* (Washington, Government Printing Office, 1906), Vol. VII, p. 60; for the Orinoco shipping case, cf. the Root note of February 28, 1907, *Foreign Relations*, 1908, p. 774, and 783.

19. Panama has frequently employed American advisers in connection with finance, police, road construction and other matters. (Cf. R. K. West, "Good Roads in Panama," *The Panama Times*, March 21, 1925.) The Rockefeller Foundation has assisted the Panama government in organizing a health service. In 1918 the Assembly authorized the employment of a foreign fiscal agent and a police instructor. *Leyes, Asamblea Nacional de Panama, 1918-1919* (Panama, Imprenta Nacional, 1919), p. 38, 45.

20. It should be noted that in the case of public order the "judgment" of the United States determines whether intervention takes place, a clause which is absent in the case of sanitation.

public treaty, assume or have assumed the obligation of guaranteeing the independence and sovereignty of this Republic."

SANITATION UNDER AMERICAN SUPERVISION

Few difficulties seem to have arisen over American intervention with respect to the sanitary question. The Panama government realized that if disease was to be stamped out of the Zone, it would also have to be eradicated from the two principal cities.²¹ In accordance with Article VII of the treaty, the administrative responsibility for the sanitation of Panama City and Colon now falls upon the United States.²²

Panama City and Colon were paved by the United States as a sanitary measure and certain assistance was given to the Santo Tomas Hospital.²³ An American health officer, under the supervision of the Chief Health Officer of the Zone, is in charge of public health in each city. The United States pays all the costs of sanitation in the two cities and one-quarter of the cost of street cleaning, garbage collection and disposal.

AMERICAN INTERVENTION IN MAINTAINING ORDER

The right of police intervention by the United States is limited by Article VII of the Canal Treaty to the cities of Panama and Colon and to adjacent territory. The United States appears to have sent troops to occupy these cities upon three occasions: in 1918, when the elections were postponed;²⁴ in February 1921, when a local mob broke into the Presidential palace and denounced President Porras as a traitor because he had stated that war with Costa Rica over the valueless land involved in the White award would be an absurdity; and in the rent riots

21. For the unhygienic condition in these cities before the American occupation of the Zone, cf. Colonel W. P. Chamberlain, *Twenty-Five Years of American Medical Activity on the Isthmus of Panama, 1904-1929* (Mount Hope, C. Z., The Panama Canal Press, 1929), p. 10.

22. Section 6 of the Taft Agreement granted the United States sanitary jurisdiction over the waters of the ports of Panama City and Colon. (Cf. *Foreign Relations*, 1905, p. 707.) A Panama decree of February 18, 1905 approved sanitary regulations, apparently drafted by Zone officials and giving the United States health officers power to apply regulations. (*Compilacion de los Decretos y Resoluciones de Carácter General Expedidos por El Ejecutivo Nacional de la República de Panamá de 1904 a 1908*, Panama, 1910, p. 247.)

23. *Isthmian Canal Commission, 1905*, p. 42; *1906*, p. 23. The Panama government authorized the United States to reimburse itself for this paving by increasing the water rate. (*Ibid.*, 1907, p. 150.)

24. Cf. p. 416.

of 1925.²⁵ Upon each occasion the American troops remained only a short time. In the first case the United States intervened without the request of Panama; in the second case the intervention was apparently in response to an oral request from President Porras; in the third case, intervention came after the Panama Cabinet had authorized the President to invoke Article 136 of the Panama constitution.²⁶

Upon several occasions, following riots between the Panama police and American sailors, and in order to induce Panama to pay demands for claims,²⁷ the United States has threatened to take over the policing of Panama City and Colon under Article VII of the treaty.²⁸

The Disarming of the Panama Police

In order to reduce clashes between the Panama police and American soldiers and sailors, Panama early agreed that the United States might maintain military patrols in Panama City to arrest American soldiers and sailors charged with minor offenses; major offenses, however, remained under Panamanian jurisdiction.²⁹ Moreover, following the Colon riots of 1915, the State Department instructed its Minister in Panama to urge the Panama government to disarm its police of high-powered rifles, which were a danger to unarmed Americans.³⁰ On this occasion, the State Department declared that the Panama authorities had made no prosecution of any individual in connection with the riots which had taken place during the last three years, and added that unless Panama undertook this disarmament the United States would be forced to consider using its rights under Article VII of the treaty. This request made supporters of the Panama government highly indignant. The

Foreign Office justified the arming of the police with high-powered rifles on the ground that since Panama had no army it was necessary for the police to receive military instruction,³¹ and stated that Panama could not agree with the interpretation placed upon Article VII by the United States.³² In a personal appeal to President Wilson, President Porras said that the demand was a humiliation to Panama and a violation of its "sovereignty."³³ Panama offered to submit its differences with the United States to the arbitration of the A. B. C. powers,³⁴ an offer which was rejected by the American Minister, who declared that to arbitrate "rights so clearly and definitely granted my Government in a treaty of such recent date, and for which such full consideration has been paid" was "unworthy of serious consideration."³⁵

Upon the promise of the Panama authorities not to use high-powered rifles in ordinary police duties, the State Department postponed further action. When it was reported, however, that the police had actually used their rifles in the case of a fire in Panama City,³⁶ the State Department demanded the immediate disarmament of the police, leaving them armed only with pistols. Panama complied with this demand under protest, and the rifles were shipped to the United States for sale.³⁷

Following a controversy with the Zone Governor in 1922, the Panama government declared that the United States could not invoke Article VII until disorder had actually occurred. At the same time, the government asked the Department for a written interpretation of the meaning of this article. The Department replied that it was very difficult to interpret a clause in advance. "However, it may be said that this Government believes that the public order" in Panama and Colon "has not been maintained if a situation should arise that may endanger the tranquillity of the Canal Zone and the regular

25. *New York Times*, March 1, 1921; *Memoria, Gobierno y Justicia*, 1926, p. ix; *Foreign Relations*, 1912, p. 1153.

26. For the American occupation of Chiriquí province in 1918, cf. p. 414.

27. For the refusal of the United States to arbitrate such claims, cf. *Foreign Relations*, 1909, p. 492; cf. also *ibid.*, 1915, p. 1183; 1916, p. 918. For the 1926 claims convention, cf. p. 425.

28. Acting Secretary H. Wilson to Minister Squiers, June 24, 1909, *Foreign Relations*, 1909, p. 485; Secretary Lansing, *ibid.*, 1915, p. 1185, also p. 1191, 1212. Minister Price, *ibid.*, 1914, p. 992; *ibid.*, 1915, p. 1196, 1202, 1209, 1224, 1226.

29. Cf. General Edwards to Minister Price, *ibid.*, 1915, p. 1226; also *Memoria, Relaciones Exteriores*, 1918, p. xxxv, p. 237. Clashes sometimes occur between the military patrols and American civilian employees. (Cf. *Panama American*, August 12, 1931.)

30. Minister Price to Secretary of State for Foreign Affairs Lefevre, note of October 15, 1915, *Foreign Relations*, 1915, p. 1229.

31. In case of rebellion, the National Police is converted into a military force. Cf. Decree of February 25, 1925, at the time of the revolt of the San Blas Indians. (*Memoria, Gobierno y Justicia*, 1926, p. 161.)

32. Minister for Foreign Affairs Lefevre to Minister Price, November 12, 1915, *Foreign Relations*, 1915, p. 1233.

33. *Memoria, Relaciones Exteriores*, 1916, p. 179.

34. I.e., Argentina, Brazil and Chile.

35. Minister Price to the Secretary of State, December 1, 1915, *Foreign Relations*, 1915, p. 1236.

36. Charge Spencer to Secretary of State Lansing, January 14, 1916, *ibid.*, 1916, p. 938.

37. Minister Price to Secretary of State Lansing, May 13, 1916, *ibid.*, p. 942.

operation of the Canal, or may endanger the lives and property of Americans and other foreigners within the two cities.”³⁸

Thus Panama contends that under Article VII of the Canal Treaty the United States may intervene only after disorder has actually occurred, whereas the United States contends that it may intervene in case disorder is merely threatened.

ANTI-REVOLUTIONARY POLICY OF THE UNITED STATES

In view of Article 136 of the Panama constitution and the guarantee of Panama's independence by the United States contained in the Canal Treaty, the question has arisen of whether the United States may act to put down disorder not only in Panama City and Colon—in accordance with Article VII of the treaty—but anywhere in Panama, and without the consent of the Panama government.

In November 1905 the Liberal party presented a memorial to Secretary of War Taft who was then in Panama, charging that the government of the republic had threatened that in case of revolt the United States would intervene on behalf of the *status quo*.³⁹ It inquired whether the United States would support a dictatorial government against a political overthrow. In reply, Secretary of State Root declared that the attitude of the United States toward revolution would depend upon whether such revolt imperilled Panama's independence or disturbed public order in the two principal cities and interfered with Canal construction, and whether the Panama government could deal with the situation. In Mr. Root's view “these are, in the main, military questions and therefore to be received by military authorities of the United States.”⁴⁰ According to this interpretation, certain revolutions in Panama might take place without American intervention. Secretary of War Taft, however, did not accept such a limited view. He wrote:

“I have no hesitation whatever in saying that in my judgment an insurrection in any part of the Republic would disturb the order in Panama and Colon and adjacent territory, and would greatly increase the difficulties that the United

^{38.} Hughes to Lefevre, March 9, 1922, *Memoria, Relaciones Exteriores*, 1922, p. 163.

^{39.} *Foreign Relations*, 1905, p. 717. The Liberals demanded supervision of elections. Cf. p. 415.

States would have in constructing the canal; and while, of course, the forces of our government ought not to intervene until it is established that the Republic of Panama cannot maintain order in its own territory, I think the United States may properly . . . suppress any insurrection in any part of the Republic.”⁴¹

The Chiriquí Occupation

Believing that American lives and property were threatened by local conditions—one American having already been killed—the United States sent troops to Chiriquí province in 1918, and kept them there until August 16, 1920.⁴² The Panama government protested against this occupation, stating that Article VII of the 1903 treaty authorized the United States to police Panama City and Colon only when the Republic could not maintain order. In reply to the State Department's contention that this occupation was based on Article I of the Canal Treaty and Article 136 of the Panama constitution, the Panama government declared that Article I was a guarantee against foreign invasion and did not authorize sending troops into Panama when it was not threatened by a foreign enemy. It argued further that Article 136 of the constitution was not an international engagement and that it merely authorized the Executive Power to invite the intervention of the United States in given cases, since no such request could be made by the government without constitutional authorization.⁴³ In 1921 the Panama government likewise attacked the alleged right of the United States to occupy Panama territory under Article I of the Canal Treaty.

“If the United States had the right to occupy the territory of the Republic without the authorization of our Government, the guarantee in the treaty would not be of independence but of absolute subjection.”⁴⁴

^{40.} He added that “if circumstances require that a military force of the United States be sent into foreign territory and there enforce the rights of this nation by force of arms, such proceeding would be an act of war, unless assented to by the nation exercising sovereignty over said territory.” Note to the Secretary of War of February 21, 1906, *Foreign Relations*, 1906, p. 1205. He argued that Panama had given such assent in Article 136 of its constitution. In a note of December 4, 1905, Mr. Root said that the United States “will not go beyond its treaty rights.” *Ibid.*, 1905., p. 720.

^{41.} Secretary of War Taft to Minister Magoon, April 26, 1906, *ibid.*, 1906, p. 1907.

^{42.} *Memoria, Relaciones Exteriores*, 1918, xxxviii; *ibid.*, 1920, xxiii. Although the United States contended that its right to do so under the treaty was clear, it advised the Panama government that American troops would cross Panama territory to learn at what ports hostile troops might land in time of war. (*Ibid.*, 1918, p. 22.)

^{43.} Lefevre to Secretary of State Lansing, August 29, 1919, *ibid.*, 1920, p. 42.

^{44.} Garay to Lefevre, September 27, 1921, *ibid.*, 1922, Vol. II, p. 101.

In 1928 Secretary of State Kellogg frankly warned that in case of revolution following the elections the United States would use its rights to maintain order should the Panama government be unable to do so.⁴⁵ Nevertheless, following a campaign in which the Arosemena administration had been accused of gross fraud and of illegally seeking to perpetuate itself in power,⁴⁶ a revolution broke out in Panama on January 2, 1931, and within seven hours forced Arosemena to resign. Apparently in accordance with the "new Hoover policy," the United States made no attempt to intervene, and the State Department authorized the American Minister, Mr. Roy Davis, to attend the inauguration of Dr. Ricardo Alfaro, who assumed office as first designate.⁴⁷ Thus the State Department, in this incident, seems to have veered away from the anti-revolutionary policy followed by Secretaries Taft and Kellogg. From the point of view of Panama, however, there is no assurance that the Department will not return to the anti-revolutionary policy, so long as it applies a bilateral contract at its own discretion and without regard to the views of the other party.

SUPERVISION OF ELECTIONS

When the United States follows an anti-revolutionary policy, the result may be the perpetuation of a dictatorship—a result which could be avoided by the supervision of elections. The Liberal memorial of 1905⁴⁸ declared that if the United States guaranteed public order in Panama, "it is strictly logical and just that it should also guarantee the existence of an absolutely lawful system of government. . . ."⁴⁹ Although Secretary of War Taft frankly said that the United States would not uphold any government based on fraud, Secretary of State Root was reluctant to assume responsibility for the supervision of elections. The United States, he said, did not propose to interfere with the independence of Panama; it would maintain an attitude of perfect impartiality between the two

45. Cf. p. 417.

46. Cf. the series of articles in *El Tiempo* (Panama City), August and October, 1930.

47. *Press Releases, State Department*, January 17, 1931, No. 155, p. 33. Cf. also the tribute paid Minister Davis in the *Panama American*, January 5, 1931.

48. Cf. p. 414.

49. *Foreign Relations*, 1905, p. 718.

parties.⁵⁰ While the United States did not doubt that Panama would succeed in holding a fair election, it appeared desirable that competent witnesses indicate that the elections had been fair.

The Electoral Commission of 1908

An intense political campaign, however, led the Amador government to ask the United States on May 15, 1908 to name an electoral commission which was to cooperate with a Panama commission in the conduct of the Presidential election of 1908.⁵¹ The United States accepted the invitation on the same day, naming a commission of fourteen, two for each of the seven provinces, to cooperate with the Panama commission.⁵² The regular Panama election machinery continued in existence; the function of the American and Panamanian commissioners was merely to visit the provinces and give hearing to complaints.⁵³

While technically the party in power had requested American supervision, a Cabinet Minister declared that "the intervention of the American government had come" as a result of the efforts of the Opposition, and had turned out to be a "sorrowful episode" and a humiliation.⁵⁴ So bitterly did the government party resent supervision that it abstained from going to the polls, and as a result Dr. José Domingo Obaldia, the Opposition candidate, was elected. The retiring President, Dr. Amador, did not attend his successor's inauguration.⁵⁵

Supervision of 1912 Elections

In 1912 another bitter Presidential contest arose between the *Union Patriotic*, composed mostly of Conservatives, the government group, which backed Pedro A. Diaz as its candidate, and the Liberal Opposition, which supported Dr. Belisario Porras.⁵⁶ Following alleged efforts of the Opposition to pad registration lists,⁵⁷ the Panama gov-

50. Note of December 4, 1905, *ibid.*, 1905, p. 720.

51. In 1906 the American Minister persuaded the Liberal and Conservative parties to agree on a common candidacy in elections for the Assembly. *Foreign Relations*, 1906, p. 1140.

52. The Isthmian Commission (*Annual Report*, 1909, p. 258) referred merely to the "observation" of the 1908 elections.

53. Cf. "Informe de la Comisión Investigadora Electoral de la Provincia de Coclé," *Panama Star and Herald*, 1908. Similar reports were published for the provinces of Panama, Bocas del Toro, Colón, Chiriquí and Veraguas.

54. *Memoria, Gobierno y Justicia*, 1908, p. xi.

55. Chargé Weitzel to Secretary of State Root, *Foreign Relations*, 1908, p. 666.

56. *Ibid.*, 1912, p. 1136 et seq.

57. *Los Hechos* (Panama City), July 2, 1912.

ernment asked the United States to intervene in the elections under Article 136 of the Panama constitution.⁵⁸ The United States accepted this request and appointed an electoral commission composed of its Minister to Panama, Mr. Dodge, president, Colonels Goethals and Green, and Judge Frank Feuille. A representative of the commission, together with representatives of the government and of the Porras group, went to each registration place to see that the ordinary machinery registered voters properly. Subsequently the commission provided about 180 American supervisors, two for each poll, to watch the elections.⁵⁹

It was intended that the United States should supervise the municipal election of June 30, 1912 and the Presidential election of July 14, 1912. It became evident early in the first campaign, however, that the American supervisors would experience difficulties. The American Minister reported that the government was doing its utmost to restrict the powers of the commission and to elect Diaz. Despite these efforts, the Opposition candidates, favoring Belisario Porras, were elected by large majorities in the municipal elections.⁶⁰⁻⁶²

Confronted by defeat in the Presidential election, the government candidate withdrew, charging the American supervisors with fraud and partiality, with the result that Belisario Porras was elected by default. The American representatives reported that without supervision the government would have imposed its candidates by unfair means, and that consequently great bitterness now existed against the supervisory committee and to some extent against Americans in general.

With the approach of the 1916 elections, the Opposition asked the United States for supervision. President Porras, however, now opposed the request on the ground that supervision inevitably strengthened the Opposition and was proof of the unfairness of the government. The State Department had declared, in the meantime, that while it

was well disposed to undertake the task, it would do so only at the request of the government, which was not forthcoming.⁶³ Despite Dr. Porras' assurance that the election would be fair, the Opposition abstained from going to the polls, with the result that Dr. Valdez, the government candidate, was elected unopposed.⁶⁴

Supervision of 1918 Elections

The supervision question arose again in 1918 when, charging that the Opposition had gained control of the electoral machinery in each district by political manoeuvering, the government issued a decree postponing the municipal and assembly elections which should have taken place in July.⁶⁵ The United States, however, expressed doubts as to the constitutionality of this decree and, invoking Article 136 of the constitution, asked that it be repealed. Three days later it took over the policing of Panama City and Colon.⁶⁶ After obtaining from the United States a promise that it would supervise the elections without any expense to Panama, the government repealed the decree on July 2. The elections were then held, American army officers acting as observers at the polls. In a number of provinces the election judges, who belonged to the Opposition party, declared that the latter had won. The Panama government contested this decision and asked the United States to have its Electoral Arbitral Commission decide the dispute.⁶⁷ This commission decided, after investigation, that the government candidate had won in a majority of the provinces.⁶⁸

Mr. Kellogg's Anti-Revolution Statement

The 1918 election was the last one supervised by the United States. In 1928 Dr. Porras, who has held the office of President three times, went to the United States and requested the State Department to intervene and thus guarantee a free election. He argued that the United States had the right to intervene under the 1903 treaty, and that intervention was justified because the Chiari

58. Note of May 6, 1912, Secretary Eduardo Chiari, *Memoria, Relaciones Exteriores, 1921*, p. 115. Cf. also Minister Arias to Acting Secretary of State Wilson, May 6, 1912, *Foreign Relations, 1912*, p. 1139.

59. For the instructions, cf. Decree No. 414, 1912. *Memoria, Gobierno y Justicia*, p. 81. Cf. also *Foreign Relations, 1912*, p. 1149.

60-62. *Foreign Relations, 1912*, p. 1154.

63. United States note of May 6, 1916; Panama reply of May 7, 1916; *Memoria, Relaciones Exteriores, 1916*, xxvii, 221.

64. *Memoria, Gobierno y Justicia, 1916*, xviii.

65. Decree 80 of 1918, government manifesto of June 29, 1918, *Memoria, Gobierno y Justicia, 1918*, p. 305.

66. Cf. p. 412. *Memoria, 1918*, xxxvii.

67. *Memoria, Gobierno y Justicia, 1918*, p. 307.

68. For its judgment, cf. *ibid.*, p. 308.

administration had repealed the election law of Panama,⁶⁹⁻⁷⁰ thus making a fair election impossible. In reply to this request, Secretary Kellogg declared:

"A painstaking analysis of the representations made and of the documents submitted has failed to convince the department that there is sufficient ground to authorize intervention. While this government has vital interests to protect in the Canal Zone and authority to intervene to maintain public order, the primary obligation, as the department has hitherto stated, to conduct a free and fair election and for the maintenance of law and order in Panama rests upon the Panama government. Between the two parties the United States will do nothing to help either the party in power or the opposition party."

"The department has been assured by the Panama Minister in Washington that his government will administer the law in a scrupulously impartial manner as otherwise it would not expect the recognition of the Government of the United States of the successful candidates. . . .

"The opposition party has stated that unless there is intervention by this Government revolutionary activities will ensue. The Department sincerely trusts that such counsel will not prevail. Nevertheless, should such a lamentable situation arise, the Department believes the Panama Government will be able to preserve public order. Should this, unfortunately, not be the case, the United States would be compelled to exercise the power granted under the treaty and the Constitution to maintain order."⁷¹

AMERICAN VETO OVER CONCESSIONS

Fearing lest Panama grant railway concessions which would increase the difficulties of the United States in defending the Canal and in applying the guarantee of Article I of the Canal Treaty, the American government has insisted on vetoing certain concessions.⁷² In 1911 Mr. Wilson, Acting Secretary of State, declared that the obligations of the United States to protect Panama carried with it

"... the right to do the things necessary to such protection. . . . Thus, the United States may at any time, in responding to the duties of its treaty obligations to protect Panama and the Canal Zone, be compelled to take control of any harbor or railroad line as 'necessary and con-

venient' for the protection of the Canal. It would appear that if rights or properties so needed for the protection of both countries and the control of which was at any time desired by the United States for these broad purposes should have been meanwhile made the subject of concessions by Panama to foreign capitalists, then, in the expropriation and adjustment which it would fall to Panama to carry out the Government of Panama might find itself under serious foreign embarrassment and subject to large international reclamations."⁷³

The United States therefore intended to express its views in advance concerning proposed railway concessions. Following a protest from Washington, the Panama government cancelled a railway concession granted to an Anglo-German syndicate in 1912.⁷⁴ Likewise, in 1913, Secretary of State Knox vetoed a proposed concession to an American, on the ground that the right to construct a port and a branch railway was objectionable from the military point of view.⁷⁵

The United States has not opposed the granting of mining and other concessions to foreigners, and considerable British capital has secured mining concessions in Panama.⁷⁶

RADIO MONOPOLY GRANTED UNITED STATES

The United States has expressed the belief that the control of radio throughout the whole of Panama is essential to its guarantee of Panama's independence and necessary for the operation and defense of the Canal.⁷⁷ In 1913 the Navy proposed an agreement giving the United States a radio monopoly within Panama.⁷⁸

While Panama at first resented the request for a monopoly, it finally enacted a decree establishing American radio control for the

72. Another ground for objection to certain concessions is that Article V of the Canal Treaty grants the United States a monopoly of communications across its territory between the Caribbean and Pacific Ocean. (Cf. *Memoria, Relaciones Exteriores*, 1920, p. 112.)

73. Acting Secretary of State Wilson to Chargé Andrews, September 20, 1911, *Foreign Relations*, 1912, p. 1183.

74. *Ibid.*, p. 1198.

75. Secretary of State Knox to Minister Dodge, February 13, 1913, *ibid.*, 1913, p. 1091. In 1917 the Duncan concession was finally approved on the understanding that no branch lines could be built without the consent of the United States. (*ibid.*, 1917, p. 1194.)

76. H. K. Norton, "Why Britishers in Panama?" *World's Work*, November 1930.

77. Cf. the report of G. H. Clark, December 29, 1911, *Foreign Relations*, 1912, p. 1213. Mr. J. Reuben Clark, then solicitor of the State Department, in a memorandum on the question declared that the United States "has a complete and indefeasible right" to erect radio stations in Panama, on the ground that they are necessary to the operation of the Canal, and that it need not even formally negotiate with Panama on the subject. (*ibid.*, p. 1222.)

78. Secretary of the Navy Daniels to Secretary of State Bryan, November 23, 1913, *Foreign Relations*, 1914, p. 1040.

69-70. Cf. *Código Administrativo*, Republic de Panama (Barcelona, 1917, Título IV); amended by Law 46 of 1919, *Leyes Expedidas por la Asamblea Nacional de Panama, 1918-1919*, p. 610. Cf. also E. A. Morales, "La Reforma Electoral," *Ensayos, Documentos y Discursos*, Vol. II, p. 53. For the Chiari amendments emasculating the law, cf. Law 60 of 1925, Articles 60, 104, *Leyes, Asamblea Nacional de Panama, 1924-1925*, p. 382.

71. *New York Times*, July 28, 1928.

duration of the World War. This decree did not satisfy the United States, with the result that on August 29, 1914 a new decree was

promulgated granting the United States "complete and permanent control"⁷⁹ over wireless communication in Panama.

RIGHTS OF THE UNITED STATES WITHIN THE CANAL ZONE

While conflicts have thus arisen regarding the right of the United States to intervene in the foreign and domestic affairs of Panama, the principal dispute between the two countries concerns the extent of the rights of the United States within the Canal Zone. This issue first arose in June 1904 when General G. E. Davis, Governor of the Zone, promulgated orders establishing ports within the Zone, organizing an American postal system, and imposing the Dingley tariff duties upon foreign imports into the Zone while providing for free trade with the United States.⁸⁰ As a result of these orders, public opinion in Panama against the United States became inflamed. It was believed that the new régime would bring about the economic ruin of Panama, since it would encourage merchants to move their establishments from the two Panama cities into the Zone.⁸¹

The Panama government protested that the United States had no right to issue these orders since the Canal Treaty did not involve the cession of territory or the absolute transfer of sovereignty to the United States. While it was true that the 1903 treaty gave the right to "exercise the powers of sovereignty," these powers were limited to measures necessary and convenient for the construction and maintenance of the Canal. Moreover, Article XIII of the treaty specifically declared that the "United States may import at any time into the said Zone and auxiliary lands, free of customs duties" any materials "necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal." This article, Panama contended, clearly forbade the United States from opening the Canal Zone to general commerce. The Panama government cited other articles in the treaty in which Panama made a number of specific grants to the United States.⁸²

⁷⁹. *Ibid.*, 1914, p. 1051. Cf. also *Memoria, Relaciones Exteriores*, 1922, Vol. II, p. 214. For the radio provision in the 1926 treaty, cf. p. 425.

⁸⁰. For the text, cf. Malloy, *Treaties of the United States*, cited, Vol. III, p. 2762.

⁸¹. Testimony of Secretary of War Taft, "Monetary Agreements with Panama," *Hearings before the Finance Committee of the United States Senate* (Washington, 1906), p. 6.

⁸². Thus it transferred all its rights in the New Panama Canal and Panama Railroad Companies, agreed not to impose

THE DISPUTE OVER SOVEREIGNTY

According to the principle of *unius inclusio alterius exclusio*, these specific grants would have been unnecessary had the authors of the treaty intended to grant complete jurisdiction to the United States within the Zone. Panama contended that it retained jurisdiction over the question of whether foreign commerce could be carried on in this area since such a grant had not been specifically made to the United States.⁸³

Panama claimed that "the two countries exercise jointly the sovereignty over the territory of the Canal Zone."⁸⁴

In reply to this argument the United States declared that since it had all the powers of a sovereign, it had the right to establish customs houses and provide post offices and that this held true even if the abstract nominal rights of sovereignty remained vested in Panama. The latter, according to the United States, may be the "titular sovereign" in the Zone; such sovereignty, however, is "mediatized by its own acts." The phrase for "the construction, maintenance and operation" of the Canal did not constitute a limitation of the grant, but merely a declaration of Panama's motives.⁸⁵

The United States also declined to accept Panama's interpretation of Article XIII. This article, in the opinion of Washington, merely gave the United States the right of

any taxes on the Canal, and undertook to permit immigration into the Zone and to allow the United States to import into the Zone free of duty all supplies necessary and convenient for the Canal. The treaty also authorized the United States to land troops and establish fortifications within the Zone. (Cf. Articles VIII, XIII, XXII.)

⁸³. For text of the note of Minister de Obaldia to Secretary of State Hay of August 11, 1904, cf. *Foreign Relations*, 1904, p. 598. Cf. also Morales, *Ensayos, Documentos y Discursos*, cited, Vol. I, p. 61; the Alfaro note of January 3, 1923, cited; and *Documentos Históricos Sobre la Independencia de L'Istmo de Panamá* (Panama, Imprenta Nacional, 1930), p. 401.

⁸⁴. The Panama government declared that the words "to the entire exclusion of the exercise of rights of Panama" are in obvious contradiction to those which precede, and must be construed in accordance with other subsequent articles. Panama "still preserves part of the judicial powers of the Canal Zone. . . . If there should exist any discrepancy between the clauses . . . it is obvious that the last ones should prevail, because they are more specific and more clear, and because they are more in conformity with the remaining clauses of the same treaty . . ." (*Foreign Relations*, 1904, p. 602).

⁸⁵. Secretary of State Hay to Minister de Obaldia, October 24, 1904, *Foreign Relations*, 1904, p. 613.

"free transit" across Panama territory into the Zone. When work on the Canal was first begun, it was necessary to import goods into the Zone through the Panama port of Colon, and the United States wished to make sure that such importation into the Zone would not be impeded by Panama. Later, however, the United States constructed modern ports within the Canal Zone at New Cristobal and Ancon, at which all American imports and most of the imports destined for Panama were to be entered. It was the contention of the United States that with the opening of the Zone ports, Article XIII, which simply granted free transit to the United States through Panama ports, was no longer applicable; and that the United States by virtue of Article II of the treaty was free to import whatever goods it wished into the Zone.⁸⁶

The Taft Agreement, 1904

Thus the two governments vigorously disagreed as to the extent of the rights of the United States. To settle this dispute, President Roosevelt instructed Mr. Taft, then Secretary of War, to go to Panama where, as a result of negotiations with President Amador, the so-called Taft Agreement was concluded in December 1904. The spirit of these negotiations, as far as the United States was concerned, was indicated by President Roosevelt's letter to Mr. Taft of October 18, 1904:

"The people of Panama have been unduly alarmed at the effect of the establishment of a government in the Canal strip by the commission. Apparently they fear lest the effect be to create out of part of their territory a competing and independent community which shall injuriously affect their business, reduce their revenues, and diminish their prestige as a nation. . . . We have not the slightest intention of establishing an independent colony in the middle of the State of Panama, or of exercising any greater government functions than are necessary to enable us conveniently and safely to construct, maintain and operate the canal under the rights granted us by the treaty. Least of all do we desire to interfere with the business and prosperity of the people of Panama."⁸⁷

The Taft Agreement⁸⁸ provided that no imports could be entered at the two terminal

Canal ports except goods described in Article XIII of the treaty of 1903 as being necessary for Canal construction, or goods in transit, as well as coal and oil.⁸⁹ Free trade between Panama and the Zone was established. In return, Panama agreed to reduce its customs duties from 15 to 10 per cent and to grant complete sanitary jurisdiction to the United States in the maritime waters of the ports of Panama and Colon. The United States agreed to make use of stamps, surcharged with the words "Canal Zone," purchased from the Panama government for 40 per cent of their face value, the remaining 60 per cent going to the Canal postal administration. This postal arrangement eventually netted the Panama government about \$40,000 a year. It was provided that the Taft Agreement was "not to be taken as a delimitation, definition, restriction, or restrictive construction of the rights of either party" under the 1903 Canal Treaty.

While the Taft Agreement met many of the demands of Panama, it did not attempt to define what imports were "necessary and convenient" for Canal purposes, nor did it specifically authorize the establishment of United States government commissioners.

THE STATUS OF AMERICAN COMMISSIONARIES

In undertaking the construction of the Canal, the United States was confronted with the problem of caring for thousands of employees. To provide for the wants of American employees, the Isthmian Canal Commission extended into the Canal Zone branches of the commissaries maintained by the Panama Railroad.⁹⁰ At first "silver employees"—i.e., Jamaican unskilled laborers paid in local currency—were not allowed to purchase goods at these commissaries, in the belief that natives from the tropics could secure from local merchants the food and clothing to which they were accustomed.⁹¹ It was announced, however, that if the Panama

88. This agreement took the form of simultaneous executive orders of the President of the United States and decrees of Panama of December 3, 1904. (Cf. Malloy, *Treaties of the United States*, cited, Vol. III, p. 2756; *Convenio Taft, Tratados Publicos, Supplement A-No. 1*, Panama, 1926.)

89. Mr. Taft's order of December 6, 1904, however, provided that other goods could be landed at the Zone ports in transit to any part of the Canal Zone or the Republic upon payment of the proper duties to Panama. (Malloy, *Treaties of the United States*, cited, p. 2763.) Nearly all of Panama's imports now enter through the zone ports.

90. *Report of the Isthmian Canal Commission, 1903-1904*, p. 47.

91. Executive order of January 7, 1905.

86. Mr. Hay's note of October 24, 1904, as elaborated by Secretary Hughes in his note to Mr. Alfaro of October 15, 1923.

87. "Report of Isthmian Canal Commission, 1903-1904," House Document 226, 58th Congress, 3rd Session, p. 5.

merchants (many of whom were foreigners) charged excessive prices, the United States would open its commissaries to the silver employees. In August 1905 the Canal commission reached the conclusion that the merchants could not adequately supply the needs of these laborers, and the Panama government consequently consented that they be given commissary privileges. The commission agreed in principle to limit the sale of goods to "necessities," and it was provided that cash purchases would be prohibited in favor of coupons which could be obtained only from timekeepers, and in limited amounts.⁹²

Since then the American commissaries, which are operated by the United States government, have developed into thriving business enterprises. They cater to virtually all the material needs of the 40,000 people who inhabit the Zone, and in addition to recognized necessities carry elaborate stocks of so-called "luxury" goods.⁹³ The gross receipts from sales by these commissaries ranged between \$10,000,000 and \$11,000,000 for 1929 and 1930,⁹⁴ and the net profit to the American government during each year was about half a million dollars.

Upon numerous occasions the Panama government has made objections concerning the commissaries on grounds of law and policy. While apparently it admits that the United States may operate commissaries under the Canal Treaty, it denies that these commissaries may legally sell so-called luxury goods to Canal employees, or that they may sell any kind of goods generally to non-employees, such as tourists passing through the Canal. In support of this contention, Panama cites not only Article II of the treaty, but also Article XIII which, it claims, limits duty-free imports into the Zone to what is "necessary and convenient in the construction, maintenance, operation,

92. *Report of the Isthmian Canal Commission, 1903-1904*, p. 49. It is understood that Panama consented to the extension of the commissary privileges to silver employees in the year 1915 on condition that the Taft Agreement be modified in such a way as would permit the Panama government to raise the *ad valorem* duty on imported goods from 10 to 15 per cent.

93. Cf. List of Stock Items, Commissary Division, Supply Department, Panama Canal. Among so-called "luxuries," 12 kinds of perfume are carried, 17 kinds of powder, 3 kinds of tapestries, 12 kinds of hair tonic, 12 kinds of toilet water, 26 kinds of soft drinks, 20 kinds of cigarettes, 22 kinds of tobacco, fishing tackle and other sports goods, Smyrna rugs, cocktail shakers (although the Zone is "dry"), Community Plate Silver, typewriters, and 26 kinds of soda fountain syrup.

94. *Eighthieth Annual Report of the Board of Directors of the Panama Railroad Company, 1929*, p. 22; *Eighty-First Annual Report, 1930*, p. 15.

sanitation and protection of the Canal." Following the same reasoning, the Panama government has contended that the establishment of bonded warehouses in the Zone and the provisioning of ships passing through the Canal by the United States are not authorized by the Canal Treaty of 1903 or by the Taft Agreement.⁹⁵

From the point of view of policy, the Panama government in June 1925 declared:

"It is a publicly known fact that today merchandise is sold [by the commissaries] to all those who wish to buy. . . . These articles are introduced into the Canal Zone from the United States, Europe and Asia without the payment of duties of any kind, and enjoying special reductions in steamship and railway freights on account of quantity shipments; they are stored in official warehouses, for which they do not pay rent, or, if they do pay any, it is purely nominal, and are sold or distributed by employees in the service of the United States. The fact is, then, that the authorities of the Canal are using the inexhaustible resources of the United States and the peculiar situation which this country occupies in Panama in such a way as may eventually bring about the annihilation of Panama commerce."

Panamanians argue that, while the commissaries may have been justified during the construction period, the Zone population today is fairly stable and Panama merchants can supply its needs. They regard it as ungenerous of the United States, which at home insists upon the virtues of private enterprise, to compete with Panama merchants in the dry-goods, grocery and hardware business. The gross sales of the American commissaries at present equal more than half the value of the annual imports of Panama proper; and it is claimed that if only part of the commissary trade were diverted to Panama, the prosperity of the country would increase.

In reply, the United States has contended that as far as its legal rights under the Canal Treaty are concerned, the commissaries may make sales even to non-employees without restriction, and the United States may maintain bonded warehouses within the Zone and provision ships. The United States reiterates that it has all the powers of sovereignty within the Zone and that Article

95. Hazera to Price, April 10, 1920, *Memoria, Relaciones Exteriores*, 1920, p. 112. The Canal Act of 1912 (Section 6) authorized the Zone government to provision ships. (Cf. *ibid.*, 1916, p. 166.) Cf. Lefevre to Thatcher, note of June 10, 1913, *ibid.*, 1914, p. 312.

XIII today is without application.⁹⁷ Nevertheless, as a matter of policy, the United States has not exercised all the rights which, in its opinion, it legally possesses.

Thus, in the Taft Agreement, it undertook, at least indirectly, not to make sales to non-employees. Despite the abrogation of the Taft Agreement in 1924, the Zone authorities assert that this rule is still followed.⁹⁸ In January 1920 the United States also gave assurances that it would not establish bonded warehouses in the Zone so long as Panama warehouses were managed in such a manner as not to impose excessive or discriminatory charges.⁹⁹ At present, however, the United States maintains a "for order" system, under which merchandise may be stored temporarily at the Zone ports for subsequent re-export. The United States insists, moreover, upon provisioning ships which pass through the Canal to protect them from inconvenience, but has agreed to provide facilities for Panama merchants to do likewise.¹ Similarly, it insists on maintaining the present scope of the commissaries on the ground that their abolition or restriction would necessitate an increase in the salaries of Zone employees, and might make these employees the object of extortion should they become dependent upon Panama merchants.²

THE PANAMA RAILROAD

Originally a private New York corporation, the Panama Railroad obtained the right to construct and operate a railway across the Isthmus under a concession from the Colombia government.³ In return for constructing this railroad, the company was granted large areas of land by the Colombia government, including the island of Manzanillo with the exception of four hectares reserved for government purposes.⁴ It is upon this land that the city of Colon has been constructed. In the 1903 treaty, Panama ceded to the

97. Cf. p. 418.

98. When charges were made in 1931 that commissary agents solicited ship passengers going through the Zone, the War Department agreed to look into the matter, indicating that if the practice existed, it would be stopped. (*Panama American*, October 14, and November 2, 1931.)

99. Price to Lefevre, January 21, 1920, *Memoria, Relaciones Exteriores*, 1920, p. 109.

1. Governor Harding, letter of June 22, 1920, *ibid.*, 1920, p. 30. Cf. also Mr. Hughes' note of October 15, 1923.

2. Cf. General Goethal's statement, *Foreign Relations*, 1916, p. 949.

3. For the text of the 1867 concession, cf. *Investigation of Affairs of Panama Railroad Company. Report of Subcommittee of Interstate Commerce*, 1905, U. S. Congress, House of Representatives, p. 18.

4. Cf. Judge Feuille's brief, *Foreign Relations*, 1916, p. 953.

United States its rights to the Panama Railroad and Canal Companies which, as a result of purchase from their French owners, became the property of the United States government. The treaty provided, however, that the Railroad and Canal Companies should return to the Panama government all their lands outside the Canal Zone "except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof."

Today the Panama Railroad is an important adjunct to the Canal administration, carrying on many commercial activities within the Zone, such as the administration of the commissaries, a laundry and a dairy, while outside the Zone it operates the Hotel Washington in Colon and leases to local business men the land upon which that city is built. In accordance with the concession and the Canal Treaty, the railroad pays no taxes to the Panama government.⁵

Colon Lands

As in the case of commissaries, the Panama government has brought many complaints against the Panama Railroad on grounds of law and policy.⁶ Its principal objections concern the railroad's control over the Colon lands. Citing a decree of the Colombia Supreme Court, Panama contends that the railroad had only a usufruct over the Colon lands, and that therefore, the lands should have reverted to the Panama government under Article VIII of the 1903 Canal Treaty.

From the point of view of policy, Panamanians declare that while at present the Panama government must bear the expense of policing these lands, which cover almost all of Colon, it is unable to collect any taxes from the railroad because of its exemption privilege. Moreover, so long as the Panama Railroad retains this ownership, the United States government, which owns the railroad, may appropriate such lands for the use of the Canal and thus gradually extinguish the independence of one of the two leading Panama cities. The American gov-

5. In August 1931 Colon hotel owners complained that while they were obliged to pay national and municipal fees, the Hotel Washington was exempt. (*Panama American*, August 8, 1931.)

6. Minister Morales to Secretary of State Lansing, February 28, 1916, *Foreign Relations*, 1916, p. 943.

ernment has already utilized part of the railroad lands in Colon for the purpose of constructing Fort de Lesseps and Battery Morgan—an act which may have terminated the immunity from bombardment which Colon enjoyed as an undefended city.⁷

In reply the United States quotes a ruling of the Colombia Supreme Court which stated that the railroad, despite its usufructuary title, had possession of the Colon lands for 99 years.⁸ While it has declined to accept the request of the Panama government to arbitrate the status of the railroad,⁹ Colonel Harry Burgess, Governor of the Canal Zone, was reported in July 1931 to have expressed the hope that some way could be found to sell the lands held by the railroad, since the United States did not wish to act as landlord.¹⁰ Should such a sale take place, the land would become subject to Panama taxation. Since the railroad land lies in Panama proper, the Panama government maintains political jurisdiction over it regardless of whether the railroad disposes of such land.¹¹

CONSULAR EXEQUATURS

Of many other controversies over the rights of the United States within the Canal Zone, perhaps the most important have been those relating to consular exequaturs and extradition. In June 1905 the State Department¹² announced that foreign consuls accredited to Panama might *ipso facto* exercise their functions within the Canal Zone. In 1921, nevertheless, the State Department revoked the agreement, and announced that in view of the opening of the Canal, the United States would grant its own exequaturs. The United States, it declared, was entitled to take such action, since the Canal Treaty gave it the same powers in the Zone which it would possess "if it were sovereign," to the entire exclusion of the rights of Panama.¹³ Panama replied that the granting of exequaturs was an act of sovereignty which was not necessary for the operation of the Canal, and that foreign consuls could not be admitted to the Zone since the Taft Agreement had forbidden foreign commerce there. Panama asked that the question be arbitrated.¹⁴ Secretary Hughes replied that:

" . . . the United States cannot understand how a difference of opinion may exist in this matter, which in the most explicit and unequivocal language gives to the United States rights of sovereignty, without exception. The only limitations which exist are those which the United States has voluntarily granted."¹⁵ The question could not therefore be arbitrated.

THE RIGHT OF EXTRADITION

The same issue of sovereignty arose in connection with extradition. Following a dispute over the extradition of two Russians requested by Chile,¹⁶ Panama, in a note of June 25, 1923, asked the United States to make a treaty providing that a foreign fugitive entering the Canal Zone be surrendered by the Zone authorities to Panama which, in turn, would surrender him to the foreign government requesting extradition.¹⁷ The United States contended that it could surrender such fugitives directly, in accordance with the Canal Act of 1912 and with Article III of the Canal Treaty which gave it the rights of sovereignty.¹⁸

In a note of September 6, 1923¹⁹ Panama declared that this interpretation would convert the Zone into an independent colony of the United States, in so far as its international relations were concerned. It asked that this difference of interpretation be referred to the Hague Court or to the Perma-

14. Lefevre to Hughes, January 14, 1922, *ibid.*, p. 186; cf. also note of August 31, 1922, *ibid.*, p. 179.

15. Hughes to Lefevre, February 3, 1922, *ibid.*, p. 187.

16. *Ibid.*, 1924, p. 243.

17. The issue was affected by the fact that fugitives wishing to enter Panama proper had to come in through the Zone ports. The question was whether the Zone authorities could apprehend these fugitives in transit.

18. Hughes to Alfaro, July 7, 1923, *Memoria, Relaciones Exteriores*, 1924, p. 262. Article XVI of the Canal Treaty provided that the two governments should make adequate provision by future agreement for the capture and delivery within the Canal Zone to the Panama Republic of persons charged with crime "without said zone," and vice versa. Secretary Hughes declared that the term "without said zone," referred only to the Panama Republic proper and not to foreign countries, a contention which Panama denied. (Hughes to Alfaro, July 7, 1923, *ibid.*, p. 262; cf. also Garay to Alfaro, July 31, 1923, *ibid.*, p. 265.)

On May 25, 1904 Panama and the United States concluded an extradition treaty providing for the mutual delivery of persons who, having been charged with the commission of crime in the territory of one of the contracting parties, shall seek an asylum in the other. (Malloy, *Treaties of the United States*, cited, Vol. II, p. 1357.) This treaty, however, did not touch the question of fugitives from third states.

19. Alfaro to Hughes, *Memoria, Relaciones Exteriores*, 1924, p. 267.

7. Cf. Article I, Hague Convention Respecting Bombardment by Naval Forces in Time of War, October 18, 1907, Malloy, *Treaties of the United States*, cited, Vol. II, p. 2314.

8. *Gaceta Judicial de Colombia*, No. 320, January 30, 1892, Vol. VII, p. 70.

9. Cf. *Foreign Relations*, 1916, p. 951.

10. *Panama American*, July 30, 1931. This statement grew out of a campaign against the railroad lands started by Mr. Nelson Rounsevel, editor of the *Panama American*.

11. American authorities have frequently stated that the only reason the United States operates the Hotel Tivoli within the Zone and the Hotel Washington in Colon is because of the lack of suitable hotels in Panama.

12. *Report of the Isthmian Canal Commission*, 1905, p. 48.

13. Hughes' note of July 20, 1921, *Memoria, Relaciones Exteriores*, 1922, p. 176.

ment Court of International Justice, "since this is a perfectly justiciable point which does not affect the honor or the vital interests of the United States." Mr. Hughes replied that while in general the United States felt inclined to favor the arbitration of legal questions, in the present case, however, the question was "one which attacks the exercise of the sovereign rights of the United States explicitly conceded by Article III of the Treaty of 1903 with Panama. It would be almost impossible for the United States to consent to submit a question of this nature to arbitration."²⁰

There is, therefore, a fundamental difference of opinion between Panama and the United States over the extent of American rights within the Canal Zone. Quoting Article III of the treaty, the United States contends that it has complete jurisdiction "to the entire exclusion of the exercise" of any powers by Panama, so that legally it may open the Zone to commerce, grant consular exequaturs and extradite fugitives to foreign governments. In support of its contention, the United States quotes statutes enacted by the Panama Assembly, referring to "the Zone ceded to the United States"²¹ and a decision of the Supreme Court of Panama,²² stating that in view of Article II of the treaty the United States has the right to administer justice within the Zone.²³ The fact that Panama has ceded its rights over the Zone in perpetuity to the United States, instead of for a stipulated period of years, is held to strengthen the interpretation of the 1903 treaty advanced by the State Department. Several decisions of American courts support the contention of the State Department, but these decisions, of course, are not binding on Panama.²⁴

Panama, in reply, quotes Article II of the treaty, and insists that the rights of the United States are limited to "the use, occu-

20. Hughes to Alfaro, note of October 13, 1923, *ibid.*, 1926, p. 262, 271.

21. Law No. 68 of 1904.

22. *Gris v. New Panama Canal Company*, Registro Judicial de Panama, No. 47, March 21, 1905, p. 59.

23. Mr. Hughes' note of October 15, 1923.

24. In the case of *Wilson v. Shaw* (204 U. S. 24, 1907) the Supreme Court declared that "it is hypercritical to contend that the title of the United States [to the Canal Zone] is imperfect, and that the territory described does not belong to this nation because of the omission of some of the technical terms used in ordinary conveyance of real estate." Cf. also *Luckenbach S.S. Co. v. the United States* (66 C.C.L. 679, 1929); *Canal Zone v. Coulson*, 1 Canal Zone Supreme Court Reports, p. 50 (1907 Hudson, Cases on International Law, 397, 399).

pation and control of the Zone for the construction, maintenance, operation, sanitation and protection of the Canal." In support of its view, Panama may advance the well-known principle that grants of sovereignty are ordinarily to be strictly construed.²⁵⁻²⁶ Upon seven or eight different occasions the Panama government has offered to arbitrate the differences arising out of the 1903 treaty, but the United States has invariably declined the offer, and has insisted upon its own interpretation of the treaty.

EXTENSION OF THE ZONE

Article II of the Canal Treaty authorizes the United States to occupy "any other lands and waters outside" the Canal Zone "which may be necessary and convenient" for the Canal, and it appears that the United States has made use of this article to acquire about seven pieces of land.²⁷ The question involved in this article is whether the United States may expropriate land outside the Zone without the consent of Panama and without compensation to that government.²⁸ Panama contends that the right to acquire land is no more than a right *in potentia* and that before occupation prior agreement is necessary.²⁹

In 1923 Panama declared that the Canal Treaty "is not a unilateral act," but an agreement between two independent and sovereign nations. Since it contains only "stipulations of a general character," the treaty should be supplemented by "protocols of execution" establishing the procedure by which the rights and obligations of the parties could be made effective. Until the proper formalities had been fulfilled, Panama stated that it would regard the occupation of additional land by the United States

25-26. *Charles River Bridge v. Warren Bridge* (11 Peters, 1837, 420); S.S. "Wimbledon," *Collection of Judgments, Publications of the Permanent Court of International Justice*, Series A, No. 1, p. 24. The Permanent Court, however, has declared that this rule must be applied only when, in spite of all pertinent considerations, the intention of the parties still remains doubtful. (*Ibid.*, "Case Relating to the Territorial Jurisdiction of the International Commission of the River Oder," No. 23, p. 26; also *Collection of Advisory Opinions*, Series B, No. 4, p. 25; *ibid.*, Series B, No. 11, p. 39.)

27. *Memoria, Relaciones Exteriores*, 1912, p. 43; *ibid.*, 1918, p. 303; *ibid.*, 1920, p. 50; *ibid.*, 1922, Vol. II, p. 267.

28. Private owners within the Zone are compensated in accordance with the findings of a joint commission (Articles VI, XV of the Canal Treaty). The appraisal of the lands taken is "based upon their value before the date of this convention"—a provision apparently intended to prevent land speculation in view of the contemplated Canal construction. In the case of land expropriated ten years or so after the conclusion of the 1903 treaty, this provision seemed onerous, and in the proposed 1926 agreement, the United States agreed to accept the value of the land at the time of expropriation. Cf. p. 425.

29. *Memoria, Relaciones Exteriores*, 1920, XII.

as hardly a "friendly act," and would be obliged to protest "before foreign chancelleries."³⁰ In 1918 Panama also asked that it be compensated for any public lands taken by the United States outside the Zone.³¹

The United States apparently believes that the original compensation paid under the treaty covers all land subsequently taken under Article II. The State Department, moreover, declared in 1924 that there can be no question as to the right of the United States to take such lands as may be necessary and convenient for the purposes described—without any more formality than a notice to the Panama government.³² Thus the United States seems to interpret Article II as giving it authority to expropriate any and all land in Panama proper, should it deem this convenient for the purposes of the Canal. Such an interpretation of Article II may possibly conflict with Article I of the Canal Treaty, in which the United States guarantees the independence of Panama.

In the course of negotiations which took place in 1923, the Panama government asked that, since the Canal had been completed, the United States decide once and for all what additional lands it needed. It intimated that the clause authorizing the taking of land was meant only to be temporary. So long as the fear of expropriation existed, the development of industry and agriculture in Panamanian areas adjoining the Zone would be paralyzed. In reply, Secretary of State Hughes declared on October 15, 1923 that while the United States would not decline to discuss the question of what additional land might be necessary and convenient for the

construction and maintenance of the Canal, it could not give any assurances as to what additional land would be needed for its protection.

"It is obviously impossible to know what the developments in modern warfare may be within the next generation even, and it is, consequently, impossible to know what additional land may be needed to meet the changed conditions as regards the protection of the canal."³³

Failing in its efforts to have the many differences over the interpretation of the 1903 treaty submitted to arbitration, the Panama government next attempted, beginning in 1915, to secure the conclusion of a new agreement modeled on the Taft Agreement, in which the United States would voluntarily waive some of the rights to which it lay claim under the 1903 treaty.³⁴

A disquieting factor, from the point of view of Panama, was introduced into the situation in February 1923, when Congress, at the request of the State Department, authorized the abrogation of the Taft Agreement.³⁵ For a number of years the Zone officials had declared that the Taft Agreement was disadvantageous to the United States and should therefore be repealed.³⁶ Moreover, the agreement had been negotiated only for the construction period of the Canal. Nevertheless, the notice of abrogation caused as great an outcry in Panama as had the original Davis decrees of 1904. Instead of obtaining further concessions from the United States, Panama found itself confronted with the prospect of intensified commercial competition from the Zone which, in its opinion, would result in the ruin of business in Panama proper.

THE 1926 TREATY NEGOTIATIONS

Meanwhile, negotiations for a new treaty had commenced.³⁷ In an *aide-mémoire* of January 4, 1924, Dr. Ricardo Alfaro, Minister of Panama to the United States, frankly declared that the debate over the legal interpretation of the treaty had led to no practical result. He asked that negotiations be opened for a new agreement to be based on two principles: first, that the Canal Treaty

should not be interpreted in such a manner as to impose upon Panama obligations so onerous as to stifle its welfare and independence; and second, that it should continue to be the declared policy of the United

33. The Panama government had proposed that any further lands needed for military purposes be secured under Article XXV of the Canal Treaty, in which the Panama government agrees to sell or lease to the United States lands adequate and necessary for naval or coaling stations.

34. *Memoria, Relaciones Exteriores*, 1916, xx, p. 157; *ibid.*, 1922, Part II, p. 194; *ibid.*, 1924, p. 205.

35. Legally it could do this because the Taft Agreement had not taken treaty form. Cf. p. 419, footnote 88.

36. *Annual Report of the Governor of the Panama Canal*, 1915, p. 438; cf. also *ibid.*, 1916, p. 57, and *ibid.*, 1921, p. 51.

37. There were exchanges of notes in 1923 on the subject.

30. Notes of October 29, 1923, and January 24, 1924, *ibid.*, 1924, p. 281, 297.

31. *Ibid.*, 1918, p. 307.

32. South to Garay, note of January 24, 1924, *ibid.*, 1924, p. 305.

States, in spite of its interpretation of the 1903 treaty, not to apply the latter in a manner prejudicial to the interests of Panama.

Secretary of State Hughes replied on January 11, 1924 that the United States was animated by the most friendly sentiments toward Panama, and desired to arrive at a satisfactory adjustment of the questions at issue. He declared: "It is not the desire of the Government of the United States to establish a commercial colony in the center of the territory of Panama, the economic competition from which would be a detriment to the prosperity and prestige of Panama." While it was necessary for the United States to reserve all of its rights under existing treaties because of the uncertain needs of the future, nevertheless "the American government would be glad to receive the suggestions of Panama concerning the manner in which it could, by means of the non-exercise of a part of its rights, promote the prosperity of Panama."³⁸

After twenty-one sessions, negotiations were suspended on August 5, 1924, when the Panamanian commissioners returned to Panama to consult their government. The principal cause of difference was the insistence of the United States on the right to denounce the commercial clauses of the new treaty at the end of fifteen years, although the other parts of the treaty, binding on Panama, were to be perpetual. Moreover, the United States asked that in return for continuing the Taft Agreement, the Panama government accept a treaty providing for the arbitration of all claims, and that Panama cede to the Zone the area in the city of Colon known as New Cristobal, and inhabited largely by American officials. As a result of further negotiations,³⁹ which were reopened on June 18, 1926, the United States finally agreed that the commercial clauses be made perpetual, while, in return, the Panama delegation consented to the transfer of New Cristobal and to the claims convention, which provided for the arbitration of claims of citizens of one country against the government of the other, which have arisen since November 3, 1903.⁴⁰

38. *Documentos Históricos*, cited, p. 430.

39. At first Panama asked for the cession of the Panama Railroad Lands in Colon in return for relinquishing jurisdiction over New Cristobal—a request which was denied. *Documentos*, p. 357.

THE NEW TREATY: ITS REJECTION

The new treaty, which was to replace the Taft Agreement and settle outstanding differences, was signed on July 28, 1926.⁴¹ Instead of conceding new rights to the United States within the Zone, the treaty in effect restored the Taft Agreement and cleared up some of the disputed points in the 1903 treaty. No promises were made by the United States with respect to the acquisition of additional land. Nevertheless, the new treaty established a procedure whereby the United States, should it find it necessary to acquire private property, would give notice to Panama through diplomatic channels. Title to the desired land would be considered as having passed to the United States from the moment that such notice had been given. By such means it was hoped that speculation in land value would be prohibited. The value of private land was to be determined, as in the past, by a mixed commission, which, however, was to have a different composition from the old tribunal.⁴²

Panama, for its part, ceded to the United States "the use, occupation, and control" of New Cristobal. As compensation, the United States made certain concessions concerning the boundary between Colon and the Zone and agreed to undertake certain road construction. Panama also undertook to carry on road and bridge construction, and to expend at least \$55,000 a year for road maintenance, in accordance with the joint recommendation of a Panamanian and an American engineer. The treaty furthermore authorized the transit of alcoholic liquor across the Zone from one part of the Republic to the other, extended the sanitary control of the United States to any part of Panama threatened by epidemics, provided that no wireless station could be installed in Panama without the consent of the United States, and that airplane licenses were to be issued jointly by the two governments. Finally, Panama agreed to

40. It was also agreed to arbitrate whether Panama or Colombia had any liability for the losses sustained by Americans in the Colon fire of 1885. (Cf. J. F. Rippy, *The Capitalists and Colombia* (New York, Vanguard Press, 1931, p. 77.) For this purpose an arbitral agreement was to be concluded between the United States, Panama and Colombia. Panama ratified this convention on September 25, 1931. (Cf. *United States Treaty Series*, cited, No. 482.)

41. The text was submitted to the Senate and printed in *Senate Executive Document B*, 69th Congress, 2nd Session.

42. For a change in the basis of valuation, cf. p. 423, footnote 28.

cooperate by every possible means with the United States in the defense and protection of the Canal. Consequently, it was to consider itself in a state of war in case of any armed conflict in which the United States was a belligerent.

The United States agreed substantially to restore the provisions of the Taft Agreement closing the Zone to foreign commercial establishments. In addition, it promised to restrict sales of the commissaries, and to rent houses in the Zone, only to Canal employees. The United States was to continue to give Panama merchants facilities for making sales to ships passing through the Zone. It was expressly stipulated that nothing in the treaty would be taken as a limitation or restriction of the rights granted in the treaty of 1903 except in so far as expressly stipulated in the present agreement.⁴³

Thus it appears that the new agreement did little more than give Panama a treaty guarantee that the existing commercial policy of the United States in the Canal Zone would be continued (except for certain provisions concerning road construction and liquor transit). Panama failed to secure any limitation upon the right of the United States to extend the Zone, nor did it succeed in restricting to necessities the sales of the commissaries. The treaty was silent concerning the question of extradition, post office grants, consular exequaturs and the rights of the Panama Railroad. On the other hand, the treaty provided for the transfer to the United States of part of one of Panama's two leading cities, New Cristo-

bal, and extended the treaty rights of the United States over sanitation, radio and aviation in Panama. Likewise, in providing that Panama should become an ally of the United States in time of war—a provision made at the request of the Panama commissioner—the treaty imposed on Panama an obligation which might not conform with its obligation as a member of the League of Nations.⁴⁴

Believing that the treaty gave the United States much more than it gave Panama, and objecting particularly to the cession of New Cristobal to the United States, members of the Panama Assembly attacked the agreement so bitterly that its consideration was unanimously postponed in February 1927.

PROSPECTS FOR THE FUTURE

There are two possible methods of settling the issues in dispute between the two countries: arbitration or further negotiations. The ratification of the Pan-American Arbitration Treaty of January 5, 1929⁴⁵ by the United States would make an arbitral settlement possible. On January 13, 1932, however, the Senate Committee on Foreign Relations approved this treaty only on condition that it did not apply to disputes arising out of existing agreements.⁴⁶ It might nevertheless be possible to establish a standing Panamanian-American tribunal, perhaps with a neutral judge, having the power to decide differences concerning the 1903 agreement as they arise. Should this method be found unsatisfactory, negotiations for a new treaty or a series of agreements covering the questions in controversy could be initiated.⁴⁷

43. For a defense of the treaty, cf. Fabian Velarde, "Análisis del Nuevo Tratado," *Star and Herald* (Panama, 1927); for a criticism, cf. Prof. Francesco Cosentini, "Los Tratados y las Convenciones de la 'Zona del Canal de Panamá'" (Panama, Editorial "Acción Comunal," 1928.)

44. This question, which involves the international status of the control of international canals may be discussed in a subsequent report.

45. William T. Stone, "The Pan-American Arbitration Treaty," *F. P. A. Information Service*, Vol. V, No. 18, November 13, 1929.

46. *New York Times*, January 14, 1932.

47. During the 1926 negotiations the United States agreed to transfer to Panama the statue of Christopher Columbus, which had been the gift of the Empress Eugénie to the Colombian government. (*Memoria, Relaciones Exteriores, 1916*, XLII). On August 15, 1931 a draft agreement was announced providing for the transit of liquor across the Canal Zone.